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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/227,529	01/08/1999	TOSHIMITSU KUMAGAI	960569C	8093

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EXAMINER

TAYLOR, LARRY D

ART UNIT	PAPER NUMBER
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2876

DATE MAILED: 02/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/227,529

Applicant(s)

KUMAGAI ET AL.

Examiner

Larry D Taylor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-52, 56 and 57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 56 is/are allowed.
- 6) ☒ Claim(s) 45-52 and 57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

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DETAILED ACTION

Receipt of Pre-Amendment

1. Receipt is acknowledged of the pre-amendment filed 13 February 2002.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 45-52 and 57 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17-20 and 26 of U.S. Patent No. 6,216,953 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the US Patent similarly teach the optical reader with a stand, the stand comprising a holder section for holding a grip of the reader, the section containing a slit, an actuating jut member or readable mark, and a base for supporting the holder, the base with a concave dent thereon.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 45-47, 49-50, 52, and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilz et al. (US 5,484,992, of record) in view of Rockstein et al. (US 5,260,553, of record) and McMillan (US 4,766,297).

Re claims 45 and 57, Wilz teaches a stand for an optical reader, the stand comprising: a holder section 12 so that the grip of a reader 2 may be dismounted freely; base support 98 and base plate 70 for supporting the holder section; said holder section having a slit through which a cable attached to the reader can pass, the slit 77 on the same side of the read window (see figures 10, 16, 17, and 18).

Re claim 50, the holder functions as a stand member on which the reader is mounted in such a manner that the grip in a lateral direction (figures 16 and 17).

Re claim 52, the design of the reader and holder section requires the reader grip, when mounted, to be at an angle when the reader scanning rays are projected in a horizontal direction (see figures 2 and 11).

Wilz fails to specify the holder section in which only one end of the grip is insertably mounted.

Re claim 45, it is notoriously well known in the art for removable readers to be insertable into stands, in which the grip is the only end mounted. Such configurations are common at point of sale terminals at various retail and grocery stores. Rockstein shows a very similar reader as Wilz, the reader 1 able to have the grip end 14B inserted into holder 71 of stand 70 (fig. 10 and col. 15, lines 18-26). It would be obvious to one of ordinary skill in the art to provide this feature, as it would basically provide a different configuration of scanning, while allowing more

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or larger (if not the same amount of) objects to be transported and scanned within its designated reading region and frees the user's hands to handle scanned objects.

Wilz fails to specify a concave dent formed within the base coincident with the end of the grip of the reader and the holder section having a mark readable member to be actuated with instructions so as to report a state of the reader.

Re claim 46, taught is the structure of the base plate and holder section as having indentations for coinciding with the grip of the reader (see figure 10). However, to form the indentations in a concave shape would serve as a mere engineering design choice, functioning the same as any other indentation shape, and therefore would have been obvious to one of ordinary skill in the art.

Re claims 47 and 49, McMillan teaches a stand for an optical reader in which an actuating member 64 (figure 1) is read by the reader when the reader is placed in the stand. It would have been obvious to one of ordinary skill in the art to provide an actuating mark or member as it affords user convenience in allowing the scanner to operate automatically once the reader is placed properly in the stand. Such a modification is well known in the art and therefore would be an obvious expedient.

Wilz fails to specify the grip of the reader as mounted in such a manner that the reader extends laterally beyond, physically, a lateral side of the stand member.

Re claim 50, McMillan shows the reader placed in a channel 48 of head portion 42 of the stand (figure 1). The grip 22 of the reader physically extends beyond a lateral side of the stand. It would have been obvious to one of ordinary skill in the art to provide such a design of the reader/stand as McMillan, as such a design would allow a user to easily remove and reattach the reader to and from a hand held position. The grip extended from the reader allows a "free area" for a user to handle the reader with ease.

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6. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilz et al. as modified by Rockstein and McMillan, and further in view of Sanders et al. (US 5,612,530, of record). The teachings of Wilz as modified by Rockstein and McMillan have been discussed above.

Wilz as modified by Rockstein and McMillan fails to specify the holder section as having a jut shaped member for actuating instruction means.

Sanders teaches a stand for an optical reader, wherein a jut-shaped member 154 (see figure 5) is actuated when the reader is mounted, said member pushing instruction means.

It would have been obvious to one of ordinary skill in the art to provide jut-shaped actuating members as it affords user convenience in allowing the scanner to operate automatically once the reader is placed properly in the stand. Such a modification is well known in the art and therefore would be an obvious expedient.

Allowable Subject Matter

7. Claim 56 is allowed.

8. The following is a statement of reasons for the indication of allowable subject matter: Prior art of record fails to teach or suggest an optical unit with an optical part having specific first and second stems formed coaxially on opposite edges thereof, a third stem formed in parallel with the second stem, and a frame on which the part can rotate axially on the first and second stems, as claimed in the limitations, on which the optical part is mounted.

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Response to Arguments

9. Applicant's arguments with respect to claim 50 have been considered but are moot in view of the new ground(s) of rejection.

10. Re claim 50, the Examiner contends that the reader in the teachings of McMillan is disposed such that the grip of the reader is laterally extending from the stand member. The claimed term "lateral" is a broad and relative term, such that depending on the perspective of a user, the reader extends in a direction lateral from a vertical plane of the stand member.

11. Re claim 45, the Examiner disagrees with the applicant's arguments. In specific, the reader of Rockstein is essentially of the format as the reader of Wilz, as is adaptable to support stand 70. Handle portion 14b fits extendably into the stand holder receptacle 71 (Rockstein, figure 10). The reader of Rockstein 1 has cable attached (Rockstein figure 1A). If the reader is held in the stand of figure 10, the cable extended behind the stand 70 would have to emerge from a hole or slit in the stand. In addition, Wilz teaches the reader with a slit 77 for fitting a cable attached to the reader (Wilz, figure 10).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Larry D Taylor whose telephone number is (703) 306-5867. The examiner can normally be reached on M-F (8:30 - 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (703) 305-3503. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-4784 for regular communications and (703) 308-7722 for After Final communications.

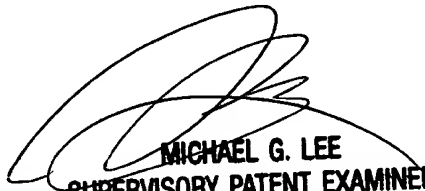
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



Larry D Taylor
February 22, 2002



MICHAEL G. LEE
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